

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-33467

Jeanne L. Smith,

Debtor.

John A. Hedback, Trustee,

ADV _____

Plaintiff,

vs.

COMPLAINT

Fabulous Floors, Inc.,
Ndba Fab Floors of Woodbury

Defendant.

TO: Fabulous Floors, Inc., ndba Fab Floors of Woodbury, Inc., 8320F City Centre Drive,
Woodbury, MN 55125.

Plaintiff, for his cause of action and prayer for relief states:

I. JURISDICTION

1. On May 13, 2003, a petition for relief was filed under Chapter 7 of the Bankruptcy Code by Jeanne L. Smith (Debtor), thereby commencing the above-referenced bankruptcy case.

2. John Hedback (Trustee) was appointed trustee of the Chapter 7 bankruptcy estate.

3. The Court has jurisdiction over this adversary proceeding pursuant to Sections 157 and 1334 of Title 28 of the United States Code and Bankruptcy Rule 7001.

4. Venue of this adversary proceeding is appropriate in this Court pursuant to Section 1409 of Title 28.

5. This adversary proceeding arises under Sections 547, 548 and 550 of the U.S. Bankruptcy Code. This is a core proceeding pursuant to Section 157 of Title 28. This complaint is filed under Bankruptcy Rule 7001 and Local Rule 901.

II. FACTUAL ALLEGATIONS REGARDING TRANSFER OF MONEY

6. On or about July 5, 2001, the Defendant entered into a loan transaction with Washington County Bank whereby it borrowed the sum of Sixty Thousand Dollars and no/100ths (\$60,000.00) from the bank. This transaction was evidenced by a promissory note where the Defendant was borrower and Washington County Bank was the lender.

7. As collateral for the above loan, Debtor granted a mortgage on her homestead for the \$60,000.00.

8. On information and belief, Debtor has paid a portion of the obligation to Washington County Bank. As a result Debtor has transferred to Defendant the sum of \$60,000.00.

III. FACTUAL ALLEGATIONS REGARDING BREACH OF CONTRACT

9. On or about July 5, 2001, the Defendant entered into a loan transaction with Washington County Bank whereby it borrowed the sum of Sixty Thousand Dollars and no/100ths (\$60,000.00) from the bank. This transaction was evidenced by a promissory note where the Defendant was borrower and Washington County Bank was the lender.

10. As collateral for the above loan, Debtor granted a mortgage on her homestead for the \$60,000.00.

11. On information and belief, Defendant has failed to fulfill its obligation in making the payments to Washington County Bank.

12. On information and belief, Debtor has paid the obligation to Washington County Bank.

III. COMPLAINT REGARDING TRANSFER OF MONEY COUNT I – FRAUDULENT TRANSFER OF \$60,000.00.

12. 13. Plaintiff realleges and incorporates herein the allegations of Paragraphs 1 through

14. The Debtor had an ownership interest in the \$60,000 funds.

15. The Debtor transferred the sum of \$60,000 to Defendant Fabulous Floors, Inc. when the Debtor signed the mortgage and made payments to Washington County Bank on behalf of the Defendant. The terms of the mortgage are for five (5) year period, commencing on July 15, 2001 and maturing on July 15, 2006.

16. The transfer of the funds constitutes a transfer of an interest of the Debtor in property.
17. The transfer of the funds occurred while the Debtor was a general partner of a corporation and the debt was still outstanding before the date of the bankruptcy filing.
18. The Debtor received less than reasonably equivalent value in exchange for such transfer.
19. The Debtor was insolvent on the date the transfer was made.
20. Plaintiff requests an order avoiding the transfer of the \$60,000 funds, which are secured by the mortgage signed by the Debtor, pursuant to Section 548 of the Bankruptcy Code.
21. Plaintiff requests and order recovering the \$60,000 funds for the benefit of the Bankruptcy estate pursuant to Section 550 of the Bankruptcy Code.

In the alternative:

IV. COMPLAINT REGARDING BREACH OF CONTRACT COUNT I – MONEY LOANED TO THE DEFENDANT

22. Plaintiff realleges Paragraphs 1 through 21.
23. The Debtor loaned the sum of \$60,000.00 to the Defendant, when she granted a mortgage on her homestead as collateral for said loan.
24. The Defendant has failed to make timely monthly payments on said loan.
25. On information and belief, the Debtor has made payments to Washington County Bank on behalf of the Defendant.
26. The Defendant has breached its contract with the Debtor causing the Debtor and the Debtor's estate to be damaged in the amount of \$60,000.00 together with interest due thereon at the rate of 7.75% per annum.

WHEREFORE, Plaintiff requests an order;

- (A) Regarding Count I,
 - (1) granting judgment avoiding the transfer of the sum of \$60,000 as a fraudulent transfer;

(2) granting judgment recovering the sum of \$60,000 for the benefit of the estate;

(4) granting judgment in favor of the Plaintiff and against Defendant Fabulous Floors, Inc., ndba Fab Floors of Woodbury for the sum of \$60,000.

(B). Regarding Count II, in the alternative,

(1) determining that the Debtor loaned the sum of \$60,000.00, plus interest, to the Defendant;

(2) determining that the Defendant has breached its contract with the Debtor and thus the Debtor's estate;

(3) granting judgment in favor of the Plaintiff and against the Defendant Fabulous Floors, Inc. ndba Fab Floors of Woodbury for the sum of \$60,000.00, plus interest at a rate of 7.75% per annum.

(C) Granting judgment in favor of the Plaintiff for his attorneys' fees and costs; and

(D) Granting any other relief the Court deems just and proper.

Hedback, Arendt & Carlson, PLLC

Dated: August 5, 2004

_____/s/ Jennifer L. Neska_____
John A. Hedback, Atty #142438
Jennifer L. Neska, Atty # 312381
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418
(612) 789-1331 Extension 228
ATTORNEYS FOR PLAINTIFF

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-33467

Jeanne L. Smith,

Debtor.

John A. Hedback, Trustee

ADV _____

Plaintiff,

vs.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Fabulous Floors, Inc.
Ndba Fab Floors of Woodbury,

Defendants.

The undersigned, being an employee of Hedback, Arendt & Carlson, PLLC, attorneys licensed to practice law in this Court, with offices located at 201 Anthony Place, 2855 Anthony Lane South, St. Anthony, MN 55418, declares that on the date indicated below, I served the following:

1. a Summons; and
2. a copy of a Complaint

upon each of the entities named below by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at St. Anthony, Minnesota, addressed to each of them as follows:

Fabulous Floors, Inc.
Jeanne L. Smith
8320F City Centre Dr
Woodbury, MN 55125

(Regular mail and certified mail, return
receipt requested)

Fab Floors of Woodbury
Jeanne L. Smith
8320F City Centre Dr
Woodbury, MN 55125

(Regular mail and certified mail, return
receipt requested)

Office of United States Trustee
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: August 5, 2004

_____/e/ Becky O'Phelan _____